

Mr. Robert M. Frank  
Environmental Fees Unit

August 27, 1990

Janet Vining  
Legal

This is in response to your June 18, 1990 memorandum, in which you request our opinion concerning application of the hazardous waste disposal fees to TSCA-controlled waste, such as PCB's.

Section 25174.6 of the Health and Safety Code identifies the percentage of the land disposal fee base rate which applies to various categories of waste. The categories include the following: (1) hazardous waste which is not subject to the federal Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. § 6901, et seq.); (2) mining wastes, (3) extremely hazardous waste; (4) restricted hazardous waste; (5) waste disposed of out of state; and (6) all other hazardous waste. The rate applicable to hazardous waste not regulated by RCRA is 25% of the land disposal fee base rate. The fee applicable to the category which includes all hazardous waste not included in the other categories is 100% of the base rate. Similar categories and rates apply concerning the Superfund tax, except that the non-RCRA rate is 15% of the base rate.

In the third and fourth quarters of 1986, disposed of soil contaminated with 300 ppm of PCB's. reported the waste in the "catch-all" category, and paid the land disposal and Superfund fees at 100% of the base rate. now asserts that this constituted an overpayment, since the waste should have been reported in the non-RCRA regulated category. requests an appropriate refund.

Federal regulation of hazardous and toxic substances is generally provided in the Resource Conservation and Recovery Act, which was adopted October 21, 1976. However, the Toxic Substances Control Act ("TSCA") (15 U.S.C. § 2601, et seq.), which was adopted October 11, 1976, regulates asbestos and PCB's (polychlorinated biphenyls). The Department of Health Services has promulgated regulations concerning the appropriate handling of waste contaminated with PCB's. (See Title 22, C.C.R.

§ 67780.) Especially noteworthy is Section 67702 of DOHS's regulations, which lists various hazardous wastes subject to land disposal restrictions. In that section, PCB's are identified as "non-RCRA" waste.

Section 25174.6(a) of the Health and Safety Code states that the land disposal fee imposed by Section 25174.1 (previously 25174) is determined as a percentage of the base rate, set pursuant to Section 25174.2, and the percentages of the base rate for determining the fees are as follows:

- (1) Twenty-five percent of the base rate for each ton...of hazardous waste disposed of,...which is not subject to...[RCRA]...or hazardous waste for which the Administrator of the Environmental Protection Agency has determined that regulation is unwarranted,...and which is not otherwise subject to the fee specified in paragraph (3) or (4).
- (2) Twenty-five percent of the base rate for each ton...[of mining waste].
- (3) Two hundred percent of the base rate for each ton...[of extremely hazardous waste].
- (4) Two hundred percent of the base rate for each ton...[of restricted hazardous waste].
- (5) One hundred percent of the base rate for each ton, or fraction thereof, hazardous waste disposed of, or submitted for disposal, in the state, which is not otherwise subject to the fees specified in paragraph (1), (2), (3), (4),...[or the residue of incineration or certain treatment processes].

The statutory sections in force in 1986 were identical to the above, except current subsection (5) was then subsection (6).

Section 25174.6(a)(1) states that a waste should be included in that category if it is either not regulated by RCRA or the EPA Administrator has determined that regulation of the waste is not warranted. While there are EPA regulations concerning PCB's, PCB's are not regulated by RCRA, and thus should be included in category (a)(1).

I contacted the Department of Health Services to confirm that PCB's are not regulated by RCRA. I spoke with Mardis Coers of the Alternative Technology office and Corey Yep of Waste Classification. Both agreed that PCB's are "non-RCRA". Ms. Yep explained that, in order for a hazardous waste to be regulated by RCRA, it must appear in certain appendices to Section 261 of Title 40 of the Code of Federal Regulations, or must fail one of the tests set forth in Section 261.20 of that title. PCB's are not listed in the relevant appendices, and, while PCB's would fail the test for toxicity described in Section 261.24, that section is limited to certain contaminants listed therein. Thus, PCB's are not regulated by RCRA.

Therefore, PCB's are appropriately reported in category 25174.6(a)(1) for purposes of determining the land disposal fee. Similarly, for purposes of the Superfund tax, PCB-contaminated waste should be reported under the category identified in Section 25342(a) of the Health and Safety Code, which applies to waste, the federal regulation of which has been suspended under RCRA.

DOHS's regulations provide that waste contaminated with 5000 parts per million of PCB's is considered extremely hazardous waste. (Title 22, C.C.R., § 66723). Any such waste should be reported under the appropriate categories for both land disposal fee and Superfund tax purposes.

*Insert Vending*

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